Regulatory Analysis

Notice of Intended Action to be published: 193E—2.1(543B)
"Definitions"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B.18
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 543B

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

December 5, 2024	6200 Park Avenue
10 to 10:30 a.m.	Des Moines, Iowa

Information on virtual participation will be available on the Department of Inspections, Appeals, and Licensing's (DIAL's) website prior to the hearing.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by DIAL no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Des Moines, Iowa 50321
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Purpose and Summary

These proposed amendments update definitions relating to the practice of real estate. This rule is proposed to be amended to support law changes implemented by 2022 Iowa Acts, House File 2324, and 2024 Iowa Acts, House Files 2326, 2394, and 2291.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

No costs are associated with this rulemaking.

- **Classes of persons that will benefit from the proposed rulemaking:**

The public and professionals benefit from the proposed definition updates. Establishing new definitions as a result of new legislation provides guidance for the public and for licensees. Without established definitions for those who wish to practice real estate, individuals could cause serious harm to the public.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

There is not a quantitative impact of the proposed definition changes.

- **Qualitative description of impact:**

There is not a qualitative impact of the proposed definition changes.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

There are no costs associated with the proposed definition changes.

- **Anticipated effect on state revenues:**

There are no anticipated effects on state revenues.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

The Real Estate Commission believes the current requirements ensure public safety and ensure a minimum competency of service is provided to Iowans.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

There are no less costly methods to consider.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

No alternative methods were considered.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

No alternative methods were considered.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed definition changes do not create any impact on small business.

Text of Proposed Rulemaking

ITEM 1. Amend rule **193E—2.1(543B)**, definitions of "Customer" and "Ministerial acts," as follows:

"Customer" ~~means a consumer of real estate services in connection with a real estate transaction who is not being represented by the licensee, but for whom the licensee may perform ministerial acts. A customer may be a client of another broker, may have yet to decide whether or not to be represented by any broker, or may have chosen not to be represented by any broker.~~ means the same as defined in Iowa Code section 543.5(10).

"Ministerial acts" means those acts that a licensee may perform for a consumer that are informative in nature and do not rise to the level of specific assistance on behalf of a consumer. For purposes of these rules, ministerial acts include, but are not limited to, the following:

1. Responding to general telephone inquiries by consumers as to the availability and pricing of brokerage services;

2. Responding to general telephone inquiries from a consumer concerning the price, facts and features, or location of property;

3. Attending an open house and responding to general questions from a consumer about the facts and features of the property;

4. Setting an appointment to view property;

5. Responding to general questions of consumers walking into a licensee's office concerning brokerage services offered or the facts and features of particular properties;

6. Accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property;

7. Describing the facts and features of a property or the property's condition in response to a consumer's inquiry;

~~8. Completing business or factual information for a consumer on an offer or contract to purchase on behalf of a client;~~

~~9. Showing a client through a property being sold by an owner; or~~

~~10. Referring a person to another broker or service provider.~~

8. Referring a person to another broker or service provider; or

9. Listing a broker providing physical or virtual access to a property to an unrepresented customer in which the listing broker has a brokerage agreement with a seller to the property.

ITEM 2. Adopt the following **new** definitions of "Agency disclosure," "Compensation," "Real estate team," "Representative," "Showing," "Wholesaler" and "Wholesaling" in rule **193E—2.1(543B)**:

"Agency disclosure" means the same as defined in Iowa Code section 543B.5(2).

"Compensation" means payment to a broker or licensee for real estate services performed.

"Real estate team" means two or more licensees assigned to the same broker, working together to provide real estate brokerage services and representing themselves to the public as a team.

"Representative" means a person or entity representing the interests of the client, on the client's behalf, but that is not the agent or broker of the client.

"Showing" means the act of a licensee providing a client physical or virtual access to a property that is being sold by a seller.

"Wholesaler" means a licensee, or a person represented by a licensee, who acquires an equitable interest, but not legal title, in a residential property for the purpose of selling the equitable interest to a buyer.

"Wholesaling" means the practice of a wholesaler entering into an assignable contract with an owner of residential property for the purpose of marketing and selling the equitable interest of the residential property to another person.

ITEM 3. Rescind the definition of "Subagent" in rule **193E—2.1(543B)**.